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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

COUNTY OF ORANGE,

Plaintiff and Respondent,

v.

MARK MARINO,

Defendant and Respondent;

LIRRA MARINO-BISHOP,

Claimant and Appellant.

G040015

(Super. Ct. No. 99FL006733)

O P I N I O N

Appeal from an order of the Superior Court of Orange County,
Claudia Silbar, Judge. Affirmed.

Lirra Marino-Bishop, in pro. per., for Claimant and Appellant.

No appearance for Plaintiff and Respondent County of Orange.

No appearance for Defendant and Respondent Mark Marino.

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INTRODUCTION

After the start of an evidentiary hearing to address issues of child custody and visitation, Lirra Marino-Bishop (Bishop) requested the family court order her ex-husband, Mark Marino (Marino), to pay her attorney fees and costs, pursuant to Family Code section 2030, and to continue the hearing. The court denied her request as untimely, and Bishop appealed.

More than 18 months had passed between the filing of Marino's order to show cause (OSC) regarding child custody and visitation, and the date Bishop filed her motion for attorney fees and costs. Bishop's motion was filed after the hearing had begun, and just three court days before the continued hearing date. Given these circumstances, we conclude the family court did not abuse its discretion by determining Bishop's motion was untimely, and we therefore affirm.

STATEMENT OF FACTS¹

Bishop and Marino were married in June 1995. They had one child, Austin, born in July 1995. Because of Marino's substance abuse problems, Bishop fled with their child and initiated dissolution proceedings in Oregon. After being arrested in 1998, Marino entered the Delancey Street Foundation substance abuse program.

¹ On our own motion, we augment the record on appeal with the following documents, all of which were filed in the superior court file in *County of Orange v. Marino* (Super. Ct. Orange County, No. 99FL006733): (1) complaint, filed July 15, 1999; (2) stipulation and order, filed September 18, 2001; (3) order after hearing, filed December 10, 2001; (4) order to show cause, filed August 21, 2006; (5) stipulation and order for a partial child custody investigation and for payment of expense thereof, filed November 15, 2006; (6) order to show cause, filed July 20, 2007; and (7) responsive declaration of Yolanda V. Torres, Esq., filed February 27, 2008. (Cal. Rules of Court, rule 8.155(a)(1)(A).)

In July 1999, the Orange County District Attorney filed a complaint against Marino to require him to reimburse the county for payments made on behalf of Marino and Bishop's son. Child support payments were ordered by the court.

In August 2006, Marino filed an OSC regarding child custody and visitation. Marino sought an order awarding him joint legal custody of Austin, and a schedule of visitation that would permit Marino to have significant contact with Austin. After the court ordered a child custody investigation, Bishop's new husband filed a petition in Riverside County to declare Austin free from Marino's parental custody and control. Marino's OSC to modify custody and visitation was stayed until the parental custody and control petition was resolved. The Riverside County court ultimately determined Bishop and her new husband had failed to meet their burden of proof, and denied the petition to free Austin from Marino's parental custody and control. Marino's OSC was therefore restored to the Orange County court's calendar in July 2007.

A hearing on the OSC regarding custody and visitation was originally scheduled for August 30, 2007. After several continuances, the matter was placed on the court's calendar for February 13, 2008.² At the hearing on February 13, Marino expressed an intent to modify his OSC to seek physical custody of Austin. After hearing the testimony of the court-appointed unification therapist, the court continued the matter to March 3, 2008.

On February 27, 2008, Bishop filed a motion for attorney fees and costs, pursuant to Family Code section 2030. The motion also requested that the hearing on the OSC on custody and visitation be continued for at least 60 days after payment of fees and

² An OSC filed by Bishop was scheduled for a hearing on the same date. That OSC requested the court to remove the unification therapist appointed by the court in August 2007 to assist in reunifying Marino with Austin, and to appoint a new unification therapist. The specifics of that OSC are not directly relevant to this appeal.

costs to allow Bishop to retain counsel. Bishop explained she was forced to represent herself in propria persona because she lacked funds to retain counsel.

Marino opposed the motion on the ground Bishop's request for attorney fees and to continue the trial was "only an attempt for Ms. Marino-Bishop to further delay Mr. Marino having any significant relationship with the minor child."

The family court denied Bishop's motion. Bishop timely appealed.

DISCUSSION

The family court's order denying Bishop's motion for attorney fees and costs is appealable. (*Lester v. Lennane* (2000) 84 Cal.App.4th 536, 564.) We review the order for abuse of discretion, and we must affirm "unless no judge reasonably could make the order." (*In re Marriage of Rosen* (2002) 105 Cal.App.4th 808, 829.)

The family court's order reads, in relevant part: "Mother's motion for attorney's fees is denied as untimely, without prejudice, *for reasons as stated on the record.*" (Italics added.) Bishop did not designate a reporter's transcript on appeal, so we do not know what specific reasons were stated on the record.³

However, we can determine from the record as augmented on appeal that Bishop's motion was untimely. Specifically, based on the respective filing dates of Marino's OSC and Bishop's motion for attorney fees and costs, the family court did not abuse its discretion by denying Bishop's motion. Marino's OSC regarding custody and visitation was filed in August 2006. That OSC was restored to the court's calendar in July 2007. Bishop filed her motion for attorney fees and costs and to continue the

³ We invited the parties to submit supplemental letter briefs advising us what reasons were stated on the record. In her supplemental brief (which was actually a 12-page repeat of her opening brief), Bishop identified the following as the court's reasoning, as stated on the record: "1. 'The only reason you're asking for attorneys fees now is because things aren't going your way.' [¶] 2. 'You have a knack for filing paperwork.' [¶] 3. 'You've been doing pretty good so far.'" None of these reasons addresses the actual grounds for denying the motion – its untimeliness.

hearing on the OSC 18 months after Marino’s OSC was filed – and after the hearing had commenced. By law, a party requesting funds from the other party in order to retain counsel must do so in a timely manner: “A party who lacks the financial ability to hire an attorney may request, as an in pro per litigant, that the court order the other party, if that other party has the financial ability, to pay a reasonable amount to allow the unrepresented party to retain an attorney *in a timely manner before proceedings in the matter go forward.*” (Fam. Code, § 2030, subd. (a)(2), italics added.) Bishop’s motion was not timely; the family court did not abuse its discretion in denying that motion.

At oral argument, Bishop advised us that the family court still has not ruled on Marino’s OSC regarding custody and visitation. We have reviewed the trial court’s docket, and have confirmed the accuracy of this statement. We note that this opinion does not bar Bishop from going back to the family court to request a need-based attorney fee award.

DISPOSITION

The order is affirmed. Because respondents did not appear, no party shall recover costs on appeal.

FYBEL, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.